

SERVED: March 5, 2003

NTSB Order No. EA-5027

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 5th day of March, 2003

_____)	
MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-16677
v.)	
)	
MICHAEL MORGAN,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the notice of appeal filed by the respondent in this proceeding because it was not filed within 10 days after service of the law judge's written decision¹ on January 24, 2003, as required by Section 821.47 of the Board's Rules of Practice (49 CFR Part 821).² We will grant

¹In his decision, the law judge affirmed the Administrator's allegations that respondent's private pilot and mechanic certificates should be revoked for his violations of sections 65.20(a)(1) and 65.77 of the Federal Aviation Regulations, 14 CFR Part 65, in connection with intentionally false statements he allegedly made on an application for a mechanic certificate.

²Section 821.47 provides, in part, as follows:

§ 821.47 Notice of Appeal.

(a) A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to § 821.8) a notice of appeal within 10 days after an oral initial decision has

the motion, to which respondent filed a reply in opposition.

Respondent's reply provides no justification for the untimeliness of his notice of appeal. In it, his counsel maintains that the admitted procedural default resulted from the last minute necessity to find a replacement expert witness in another case he was working on at the time. We do not see this circumstance as preventing or precluding either the timely filing of the required notice, which need not be more than a line or two long, or a timely telephonic request of the Board for an extension of time to prepare and file such a pro forma document. We think it obvious that the respondent's counsel simply overlooked the important filing deadline in this matter; he was not, by virtue of the referenced workload demand, rendered unable to comply with the requirement.

Without good cause to excuse a failure to file a notice of appeal or appeal brief on time, a party's appeal must be dismissed.³ See Administrator v. Hooper, 6 NTSB 559 (1988). Respondent's counsel's apparent distraction over the needs of another pending case does not provide good cause for his failure to meet the filing deadline in this one.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.

Ronald S. Battocchi
General Counsel

(..continued)

been rendered or a written decision or a final or appealable (see § 821.16) order has been served.

³That the Board's rules do not define good cause is not a reason to follow another agency's attempt to do so. At the same time, we do not believe that counsel's failure to file a notice of appeal in one case because he was too busy preparing for a hearing in another would constitute good cause under the Merit System Protection Board's guidelines. Excusable neglect does not contemplate an attorney's attending to the exigencies of one case at the expense of another.